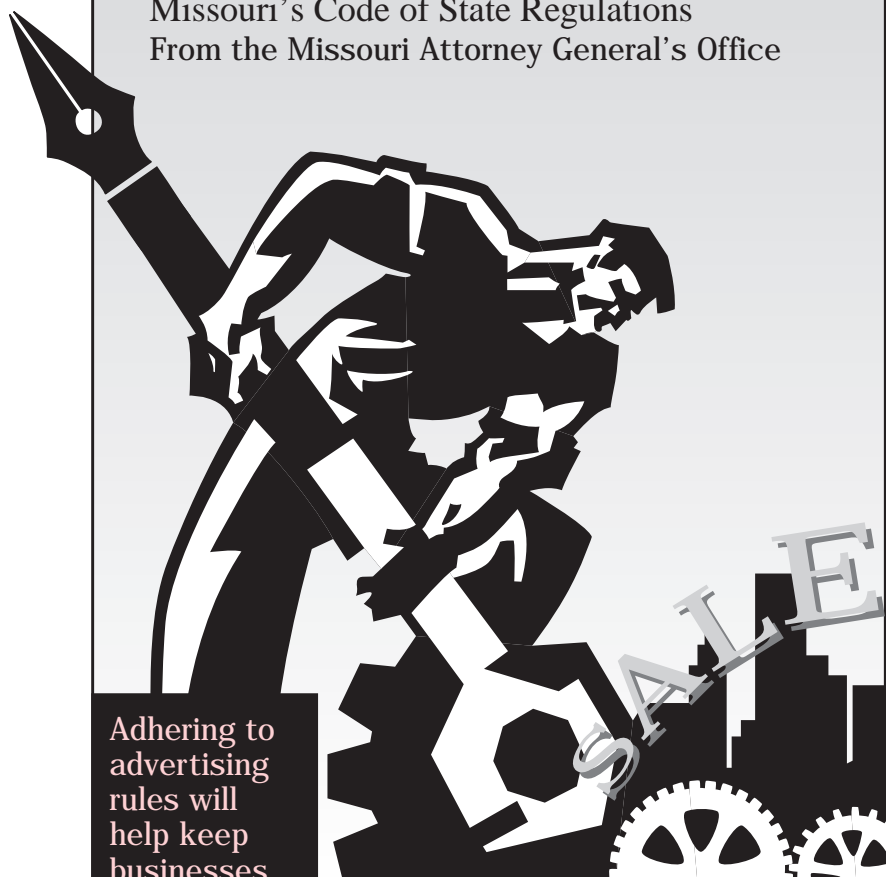


# *for* Rules Advertising

Missouri's Code of State Regulations  
From the Missouri Attorney General's Office



Adhering to  
advertising  
rules will  
help keep  
businesses

## ON TRACK

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## 15 CSR 60

### *Rules for Advertising*

#### **15 CSR 60-7.010 Definitions**

**Purpose:** The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo (1986). The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407 and may define terms whether or not used in the Act, insofar as the definitions are not inconsistent with the Act. This rule defines certain terms used in the enforcement of the Act and in rules, forms and orders made thereunder.

(1) Unless inconsistent with definitions provided in Chapter 407, RSMo and in these rules, the following terms and phrases shall mean:

(A) **Advertisement** (including the terms advertise and advertising) shall mean any oral, written, graphic or pictorial statement made by a seller in any manner in the course of the solicitation of business. Advertisement includes, without limitation, any statement or representation made in a newspaper, magazine or other publication, or on radio or television, including cable, or contained in any notice, handbill, sign, billboard, banner, poster, display, circular, pamphlet or letter, or printed on or contained in any tag or label which is attached to or accompanies any product offered for sale;

(B) **Bait offer** shall mean an alluring but insincere offer to sell a product which the seller does not intend to — i) sell at all; ii) sell at the price which it offered the product; or iii) provide the product in a quantity to meet the reasonably expected public demand, unless the quantity is specifically stated as limited in the advertisement;

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**(C) Bait and switch scheme** shall mean a plan to make alluring but insincere offers which the seller does not intend to sell when the purpose is to switch consumers from buying the advertised product to buying another product;

**(D) Clear and conspicuous** (including the terms clearly and conspicuously) shall mean that the statement, representation or term being disclosed is a size, color contrast or audibility and is so placed and presented as to be — i) readily noticeable and ii) reasonably understandable;

**(E) Comparative price** shall mean the price of a product to which a seller is comparing its current price in any advertisement;

**(F) Date** as applied to date on which a price comparison is stated in the advertisement in newspapers, catalogs or other printed publications shall mean either the date of publication or distribution or the date on which the completed advertising copy is submitted to the printer for final printing and publication, provided the submission date does not exceed twelve (12) weeks from the date of actual publication or distribution;

**(G) Material** shall mean that the representation or fact is likely to significantly influence the consumer's purchasing decision;

**(H) Original price** shall mean a former price which the seller first offered in connection with the product;

**(I) Person** shall mean an association, corporation, individual, institution, natural person, organization, partnership, trust or any other legal entity;

**(J) Price comparison** shall mean the direct comparison in any advertisement (expressed wholly or in part in dollars, cents, fractions or percentages) of a seller's current price for a product with any other price, whether or not the other price is actually stated in the advertisement;

**(K) Product** shall mean any personal property or services or other merchandise sold primarily for personal, family or household use

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and not for resale or for use or consumption in a trade or business. Product does not include any intangible merchandise sold by any bank, savings institution, trust company, mortgage company, insurance company or other financial institution;

**(L) Regular price** shall mean a seller's usual and customary price;

**(M) Sale** shall mean a reduction from the seller's former or future price of the product offered for a limited period of time, except for clearance or closeout situations in which the seller permanently reduces its price in order to remove the product from its inventory;

**(N) Seller** shall mean any person who offers, advertises or sells any product for sale, rental or lease in this state. Seller includes any officer, agent, employee, salesperson or representative of a seller; and

**(O) Trade area** shall mean the immediate geographic area within a one hundred (100) mile radius of any outlet of the seller and where the seller's advertisement is disseminated.

*Auth: sections 407.020 and 407.145, RSMo (1986). Original rule filed June 25, 1990, effective Nov. 30, 1990.*

### 15 CSR 60-7.020 False and Misleading Statements

**Purpose:** The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo (1986). This rule specifies acts and practices that are deemed to be violative of section 407.020, RSMo (1986).

**(1) A seller** shall not make a representation or statement of fact in an advertisement that is false or has the capacity to mislead prospective purchasers.

*Auth: sections 407.020, 407.145 and 570.160, RSMo (1986). Original rule filed June 25, 1990, effective Nov. 30, 1990.*

**15 CSR 60-7.030 Omission of a Material Fact**

**Purpose:** The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo (1986). This rule specifies acts and practices that are deemed to be violative of section 407.020, RSMo (1986).

- (1) A seller shall not omit any material fact in an advertisement.

*Auth: sections 407.020 and 407.145, RSMo (1986). Original rule filed June 25, 1990, effective Nov. 30, 1990.*

**15 CSR 60-7.040 Reasonable Basis for Performance Claims**

**Purpose:** The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo (1986). This rule specifies acts and practices that are deemed to be violative of section 407.020, RSMo (1986).

- (1) A seller shall not make a claim with respect to a product's performance in an advertisement unless the seller has in its possession information sufficient to form a reasonable belief that the claim, in fact, is true. A seller may rely on reasonable performance claims supplied by the manufacturer or supplier of the product.

*Auth: sections 407.020 and 407.145, RSMo (1986). Original rule filed June 25, 1990, effective Nov. 30, 1990.*

**15 CSR 60-7.050 Use of Sale Terminology**

**Purpose:** The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo (1986). This rule specifies acts and practices that are deemed to be violative of section 407.020, RSMo (1986).

- (1) A seller shall not use terminology implying a reduction from a

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price in effect immediately prior to the advertisement (examples: sale, sale prices, now only \$) unless —

- (A) The reduction is, in fact, from a bona fide regular price in effect immediately prior to the advertisement; and
  - (B) The reduction is meaningful. There shall be a rebuttable presumption that the reduction is not meaningful if the reduction in price is less than five percent (5%), unless the seller clearly discloses the actual price reduction.
- (2) The term sale may be used notwithstanding the fact that not all products appearing in the advertisement are offered at reduced prices, if the advertisement clearly identifies which products are not reduced in price.

*Auth: sections 407.020 and 407.145, RSMo (1986). Original rule filed June 25, 1990, effective Nov. 30, 1990.*

### 15 CSR 60-7.060 Price Comparisons and Savings Claims

**Purpose:** The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo (1986). This rule specifies acts and practices that are deemed to be violative of section 407.020, RSMo (1986).

(1) Price Comparison in General.

- (A) Examples: \$29.99 — Save \$10; 20% off all men's shirts.
- (B) A seller shall not make any price comparison in which the product being advertised materially differs in composition, grade or quality, style or design, model, name or brand, kind or variety, or service and performance characteristics from the comparative product, unless the seller clearly discloses the material difference in the advertisement with the price comparison.

(2) Price Comparison to Seller's Former Prices.

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**(A)** Examples: Regularly \$99, Now \$69; \$99, Now \$69 — Save \$30; Originally \$99, Now \$69; Last Year's Price \$99, Now \$69.

**(B)** A seller shall not make a price comparison to a former price, unless the comparative price is actual, bona fide and not illusory or fictitious, and is —

**1.** A price at which reasonably substantial sales of the product were made to the public by the seller in the regular course of the seller's business, and on a regular basis during a reasonably substantial period of time in the immediate, recent period preceding the advertisement. There shall be a rebuttable presumption that the seller has not complied with the terms set forth in paragraph (2)(B)1. unless the seller can show that the percentage of unit sales of the product at the comparative price, or at prices higher than the comparative price, is ten percent (10%) or more of the total unit sales of the product during a period of time, not less than thirty (30) days nor more than twelve (12) months, which includes the advertisement;

**2.** A price at which the product was openly and actively offered for sale to the public by the seller in the regular course of the seller's business, and on a regular basis during a reasonably substantial period of the time in the immediate, recent period preceding the advertisement. There shall be a rebuttable presumption that the seller has not complied with the terms set forth in paragraph (2)(B)2. unless the seller can show that the product was offered for sale at the comparative price, or at prices higher than the comparative price, forty percent (40%) or more of the time during a period of time, not less than thirty (30) days nor more than twelve (12) months, which includes the advertisement;

**3.** A price at which reasonably substantial sales of the product were made to the public by the seller in the regular course of the seller's business, and on a regular basis during a reasonably substantial period of time in any period preceding the

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advertisement, and the advertisement clearly discloses, with the price comparison, the date, time or seasonal period of that offer. There shall be a rebuttable presumption that the seller has not complied with the terms set forth in paragraph (2)(B)3. unless the seller can show that the percentage of unit sales of the product at the comparative price, or at prices higher than the comparative price, is ten percent (10%) or more of the total unit sales of the product during the disclosed date, time or seasonal period; or

**4.** A price at which the product was openly and actively offered for sale to the public by the seller in the regular course of the seller's business, and on a regular basis during a reasonably substantial period of time in any period preceding the advertisement, and the advertisement clearly discloses with the price comparison, the date, time or seasonal period of that offer. There shall be a rebuttable presumption that the seller has not complied with the terms set forth in paragraph (2)(B)4. unless the seller can show that the product was offered for sale at the comparative price, or at prices higher than the comparative price, forty percent (40%) or more of the time during a period of time, not less than thirty (30) days nor more than twelve (12) months, which includes or is included within the disclosed date, time or seasonal period.

**(C)** A seller shall not make any price comparison to a former price that is not based on the price in effect immediately preceding the reduction unless the seller clearly discloses that intermediate price reductions have been made.

**(3) Price Comparison to Seller's Future Prices.**

**(A)** Examples: After Sale \$99, Now \$69; Save \$30, Now \$69, Will be \$99.

**(B)** A seller shall not make any price comparison referencing a higher price at which any product will be offered or sold in the future unless —

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- 1.** The advertisement clearly discloses that the price comparison is based upon a future price increase;
- 2.** The effective date of the future higher price, if more than ninety (90) days after the price comparison is first stated in an advertisement, is clearly disclosed in the advertisement; and
- 3.** The future higher price increase takes effect on the date disclosed in the advertisement or, if not disclosed in the advertisement, within ninety (90) days after the price comparison is stated in the advertisement and the price increase remains in effect for at least fifteen (15) days, except where compliance becomes impossible because of circumstances beyond the seller's control.

### **(4) Price Comparison to a Competitor's Prices.**

**(A)** Examples: Compare at \$99, Now \$69; Comparable value \$99, Our price \$69.

**(B)** A seller shall not make any price comparison based on a competitor's price unless —

- 1.** The competitor's price is either a price at which the competitor sold or offered products for sale at any time within the ninety (90)-day period immediately preceding the date on which the price comparison is stated in the advertisement;
- 2.** The competitor's price is a price that is representative of prices at which the products are sold or offered for sale in the trade area in which the price comparison is made and is not an isolated price; and
- 3.** Disclosure is made with the price comparison that the price used as a basis for the comparison was not the seller's own price.

**(C)** Notwithstanding paragraph (4)(B)2., a seller may reference a competitor's price outside the trade area in which the price comparison is made, provided the seller clearly discloses that the

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prices are offered by competitors in other geographic areas, clearly discloses the other geographic area in which the price comparison is made, and clearly discloses that prices may vary in the trade area in which the price comparison is made.

**(5) Range of Savings or Price Comparison Claims.**

**(A)** Examples: Save from 10% to 50% off.

**(B)** A seller shall not state or imply that any products are being offered at a range of reduced prices or at a range of percentage or fractional discounts, unless —

- 1.** The highest price or lowest discount is clearly and conspicuously disclosed in the advertisement and, if the lowest price or highest of the range of discounts is disclosed;
- 2.** An appreciable number of items are offered at the lowest price or highest savings or discount advertised; and
- 3.** The type size of the lowest price or highest of the range of discounts is not so exaggerated as to obscure the fact that there is a range of savings.

**(6) Price Comparison to List Price or Similar Comparisons.**

**(A)** A seller shall not make any price comparison to a manufacturer's list price, a manufacturer's suggested retail price or other similar comparisons unless —

- 1.** The list price or suggested retail price is the price at which the product is offered by a substantial number of sellers in the seller's trade area;
- 2.** The list price or suggested retail price is a seller's bona fide former price and in compliance with the provisions of 15 CSR 60-7.060(2); or
- 3.** The seller uses its best efforts and is unable to ascertain that the

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list price or suggested retail price is the price at which the product is offered by a substantial number of sellers in the seller's trade area. In this circumstance, a seller may reference a list price or suggested retail price in relation to its current price as long as no savings are claimed and the seller clearly discloses that the list price or suggested retail price may not necessarily be the price at which the product is sold in the trade area.

**(B)** A list or suggested retail price permanently imprinted on or affixed to a product or its container by the manufacturer, and not under the control of or instigated by the seller, need not be covered or obliterated when the seller's current offering price is attached to, printed on or placed on a label, tag or sign accompanying the product, providing that no sale is claimed and no other price comparison is made from it.

**(7) Use of Terms — Free, Two for Price of One, Buy One, Get One Free.**

**(A)** A seller shall not state or imply that products are being offered for free or words of similar import (Buy one pair of shoes, second pair free) unless —

**1.** The seller clearly and conspicuously discloses all material conditions which are imposed on the sale; and

**2.** The price indicated by the seller as its price for the products that must be purchased as a condition to receiving the free or bonus item is the seller's own former or future price for those products as determined in accordance with 15 CSR 60-7.060(2) or (3).

**(8) Savings Claims Without Disclosing the Basis of the Comparative Price.**

**(A)** Examples: 20% off; Clearance \$59, Save \$30.

**(B)** A seller shall not advertise a product as reduced in price without specifically disclosing the basis of the comparison unless the price comparison is a comparison to a seller's former price in compliance with 15 CSR 60-7.060(2).

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*Auth: sections 407.020 and 407.145, RSMo (1986). Original rule filed June 25, 1990, effective Nov. 30, 1990.*

### **15 CSR 60-7.070 Records of Fact for Price Comparison or Savings Claims**

**Purpose:** The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo (1986). This rule specifies acts and practices that are deemed to be violative of section 407.020, RSMo (1986).

- (1) A seller shall not use any price comparison or savings claims in its advertisement of products in this state unless it maintains adequate records which disclose the factual basis for the price comparison or savings claims and from which the validity of any claim can be established. These records shall be maintained for at least twelve (12) months from the date of the advertisement.

*Auth. sections 407.020 and 407.145, RSMo (1986). Original rule filed June 25, 1990, effective Nov. 30, 1990.*

### **15 CSR 60-7.080 Bait Offers and Availability of Advertised Merchandise**

**Purpose:** The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo (1986). This rule specifies acts and practices that are deemed to be violative of section 407.020, RSMo (1986).

- (1) A seller shall not —
- (A) Make bait offers; or
  - (B) Advertise any product unless the seller has that product in stock or available for sale in sufficient quantities to meet

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reasonably anticipated customer demand during the effective period of the advertisement, unless —

1. The seller clearly discloses in its advertisement that quantities are limited or the restrictions apply to the advertised offer;
2. The seller ordered the advertised product in a timely manner and in sufficient quantities to meet reasonably expected demand, but conditions beyond a seller's control prevented it from having the product in stock during the selling period and the seller was unable to cancel or amend the advertisement; or
3. In connection with an advertisement, sale or offering for sale by retail food stores of food or grocery products, the seller offers —
  - A. A raincheck entitling prospective purchasers to purchase the advertised product at the advertised price and the seller actually has the product available within a reasonable time; or
  - B. At the advertised price or at a comparable price reduction a similar product that is at least comparable in value to the advertised product.

*Auth: sections 407.020, 407.145 and 570.170, RSMo (1986). Original rule filed June 25, 1990, effective Nov. 30, 1990.*

### 15 CSR 60-7.090 Bait and Switch Scheme

**Purpose:** The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo (1986). This rule specifies acts and practices that are deemed to be violative of section 407.020, RSMo (1986).

- (1) A seller shall not —
  - (A) Employ any bait and switch scheme;

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(B) Publish any advertisement unless it is a bona fide offer to sell the advertised product; or

(C) Use any advertising that creates a false impression about the product being offered in order to lay the foundation for a later switch to another product.

(2) The following factors, without limitation because of enumeration, may be considered in determining the existence of a bait and switch scheme:

(A) Refusing to show or demonstrate the advertised product;

(B) Disparaging the advertised product, its warranty, availability, services and parts, credit terms, etc.;

(C) Refusing to take orders for the advertised product or to deliver it within a reasonable time;

(D) Demonstrating or showing a defective sample of the advertised product;

(E) Having a sales compensation plan designed to penalize salespersons who sell the advertised product; or

(F) Having a display plan designed to draw attention away from the advertised product to another product.

*Auth: sections 407.020, 407.145 and 570.170, RSMo (1986). Original rule filed June 25, 1990, effective Nov. 30, 1990.*

### 15 CSR 60-7.100 Retail Price Labeling

**Purpose:** The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo (1986). This rule specifies acts and practices that are deemed to be violative of section 407.020, RSMo (1986).

(1) A price label permanently imprinted on or affixed to a product or its container by the manufacturer or supplier, and not under the

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control of or instigated by the seller, or which is required to be attached to that product under federal law, need not be covered or obliterated when the seller's current offering price is attached to, printed on or placed on a label, tag or sign accompanying the product, provided that no other price comparison based on that label is made by the seller.

*Auth: sections 407.020 and 407.145, RSMo (1986). Original rule filed June 25, 1990, effective Nov. 30, 1990.*

### **15 CSR 60-7.110 Lowest Price Guarantee**

**Purpose:** The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo (1986). This rule specifies acts and practices that are deemed to be violative of section 407.020, RSMo (1986).

(1) A seller shall not make any reference to a policy of matching or bettering competitors' prices in any television or print advertisement unless the seller clearly and prominently discloses in the advertisement all material conditions and limitations that apply and that full details are posted at the seller's place of business.

(2) A seller shall not make any reference to a policy of matching or bettering competitors' prices in any radio advertisement if material limitations exist unless the advertisement includes the statement: Some substantial conditions and limitations apply. See full detail in store, or words to that effect.

(3) Any policy of matching or bettering competitors' prices shall not place an unrealistic or unreasonable burden on the consumer.

*Auth: sections 407.020 and 407.145, RSMo (1986). Original rule filed June 25, 1990, effective Nov. 30, 1990.*

## TO ORDER COPIES

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